

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENITO JULIAN LUNA,

Petitioner,

No. CIV S-04-0627 KJM GGH P

vs.

SCOTT KERNAN,

Respondent.

ORDER

_____/

Petitioner is a state prisoner proceeding with appointed counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 1, 2011, prior counsel assigned to this case was relieved and new counsel was appointed, as it appeared petitioner's federal habeas petition was never filed even though the claims were exhausted several years ago in the California Supreme Court. On September 27, 2011, new counsel provided a status report indicating that the best way to address the statute of limitations issue would be for respondent to be served with the petition recently filed by petitioner. Respondent was served and filed a motion to dismiss on December 6, 2011. A hearing was scheduled for February 16, 2012, however the parties filed a stipulation to move the hearing to March 23, 2012. The court's law and motion calendar is on Thursdays, therefore the hearing was moved to March 22, 2012, at 10:00 am.

1 Local Rule 230(c) provides for an opposition to be filed no less than fourteen (14)
2 days prior to the hearing date. Opposition to the motion to dismiss should have been filed on or
3 before March 8, 2012, however no opposition was filed. Petitioner shall show cause why this
4 action should not be dismissed for failure to prosecute. The order to show cause will also be
5 heard on March 22, 2012, the same day as the hearing on the motion to dismiss which will
6 proceed.

7 IT IS SO ORDERED.

8 DATED: March 13, 2012

9 /s/ Gregory G. Hollows
10 UNITED STATES MAGISTRATE JUDGE

11 GGH:AB
12 luna0627.osc
13
14
15
16
17
18
19
20
21
22
23
24
25
26